

# A PRESENTATION ON THE KANSAS OPEN MEETINGS ACT, THE KANSAS OPEN RECORDS ACT, AND THE KANSAS GOVERNMENTAL ETHICS ACT

by

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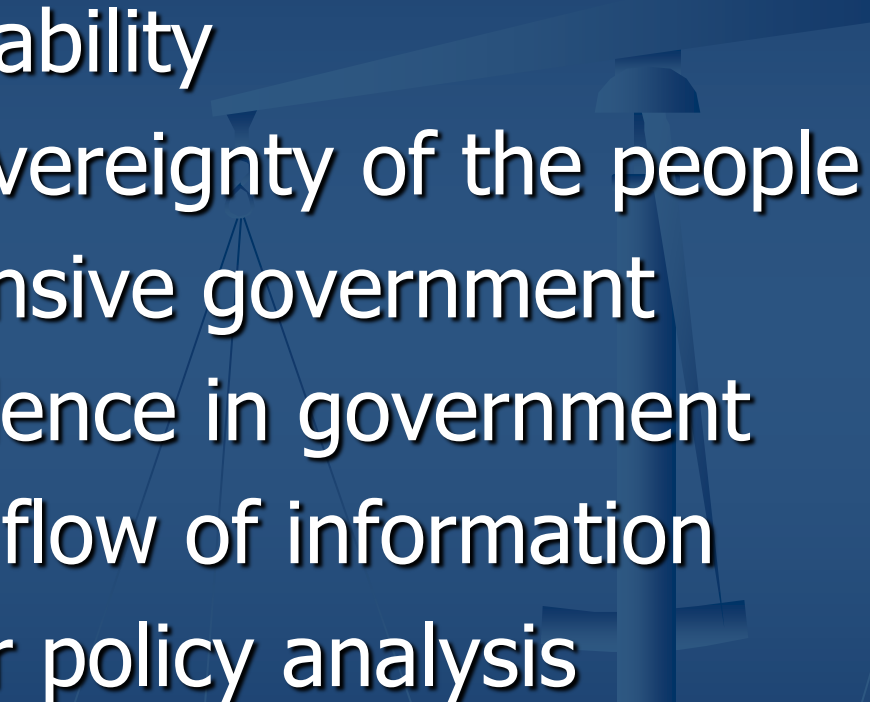


[www.sedgwickcounty.org/da](http://www.sedgwickcounty.org/da)

# Kansas Open Meetings Act (KOMA)

- Recognizing that a representative government is dependent upon an informed electorate, meetings for the conduct of governmental affair and the transaction of governmental business shall be open to the public
- It is specifically against public policy for meetings to be adjourned to another time or place to subvert policy of openness

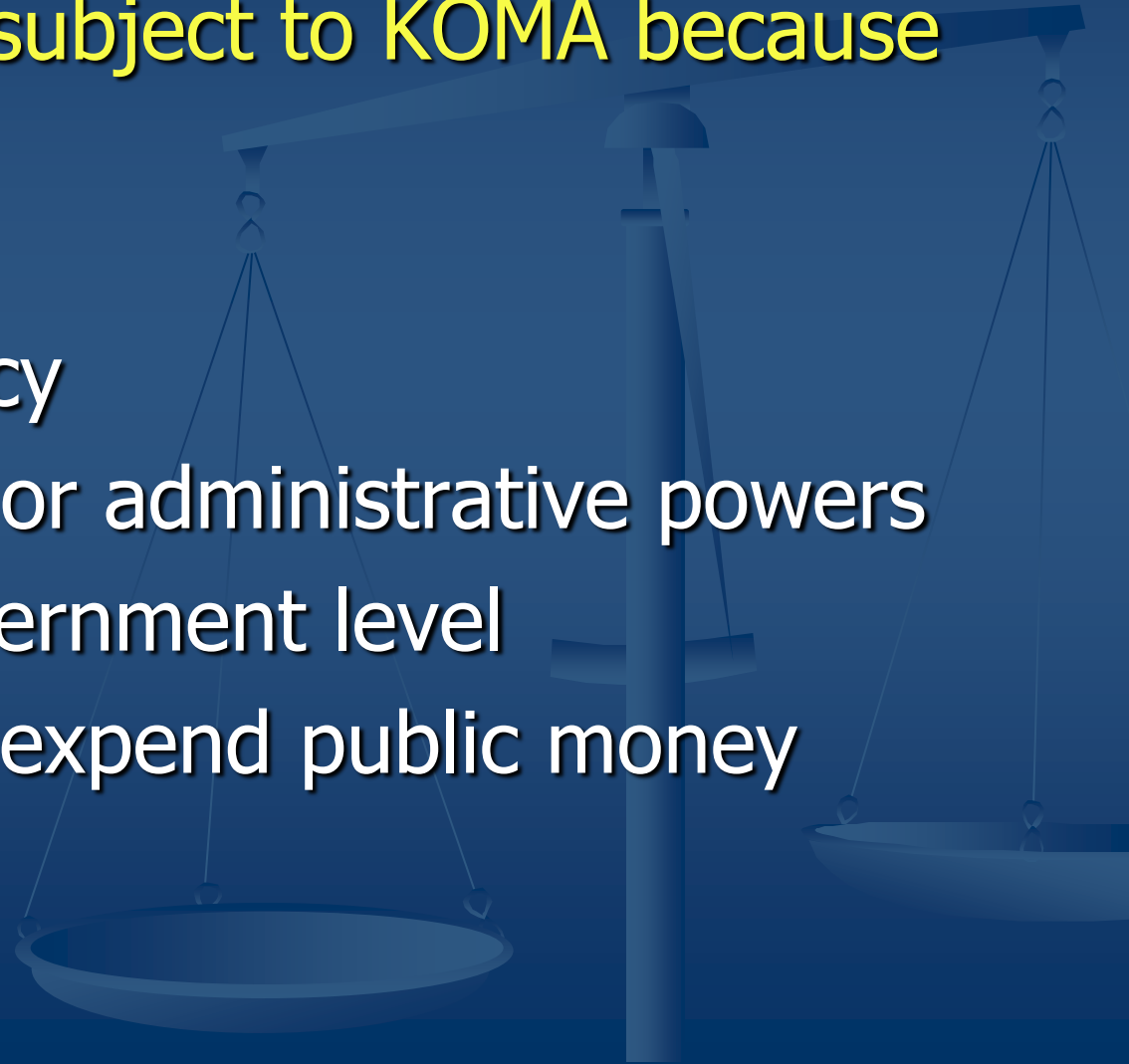
# KOMA

- Insures accountability
  - Respects the sovereignty of the people
  - Advances responsive government
  - Promotes confidence in government
  - Encourages the flow of information
  - Allows for better policy analysis
- 

# KOMA

City Councils are subject to KOMA because they are:

- A body or agency
- With legislative or administrative powers
- At the local government level
- That receive or expend public money





# KOMA

- Boards, committees, or other subordinate groups of the body are also subject to KOMA
  - Examples:
    - District Advisory Boards
    - Board of Appeals of Plumbers & Gas Fitters
- Groups need not expend public funds if supported by funds or advisory to body
- Does NOT apply to staff meetings of city departments

# KOMA

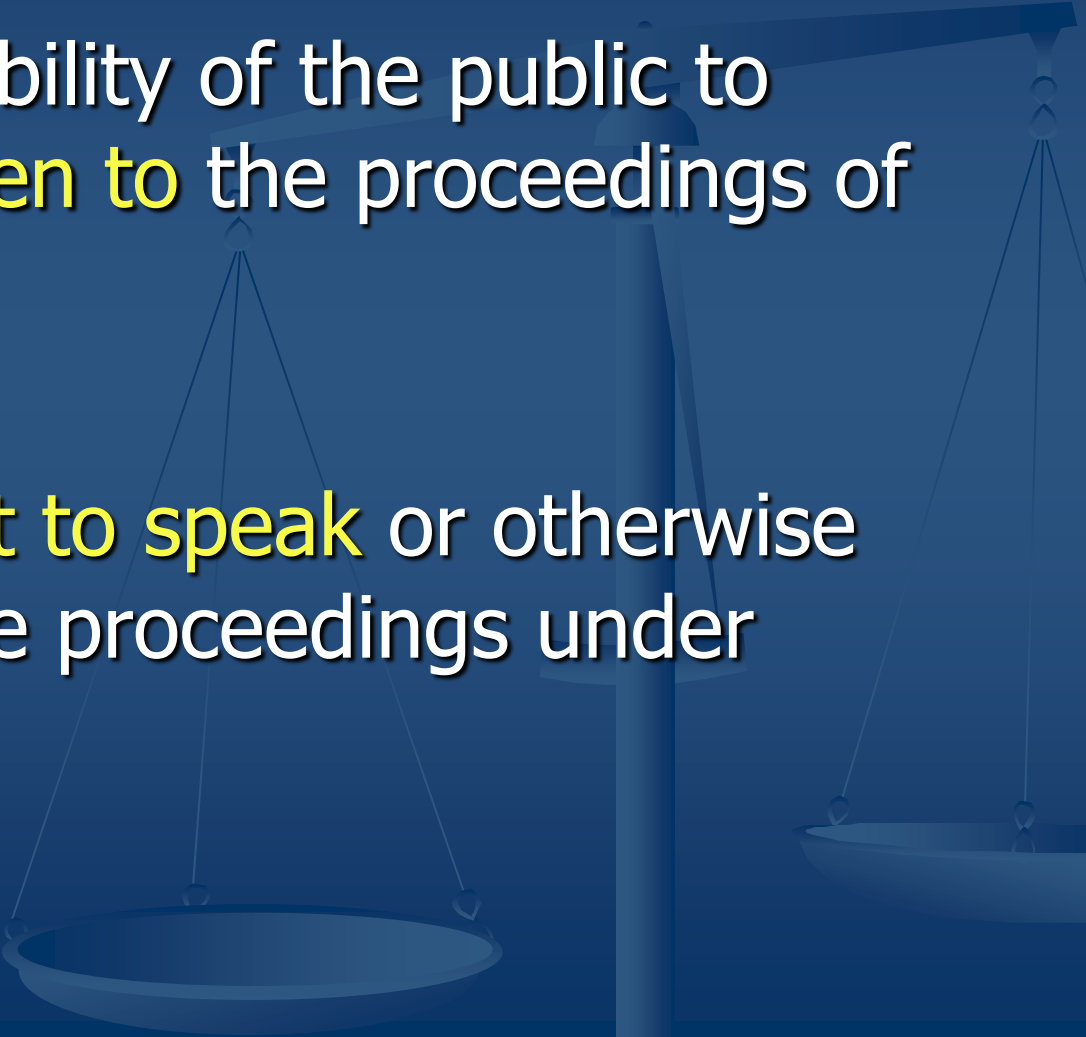
## ■ Exceptions:

- When an administrative body is **deliberating matters** as part of its exercise of its **quasi-judicial** function
  - Example: Deliberating a zoning appeal
- If otherwise provided by state or federal law or rule of Kansas House or Senate
- Parole board institutional hearings
- Impeachment inquiries

# KOMA

- Whether a meeting is open depends on the public accessibility to the meeting.
- Time, location, and space available could all be reasons to challenge the openness of a meeting.

# KOMA

- The key is the ability of the public to **observe and listen to** the proceedings of the body.
  - There is **no right to speak** or otherwise participate in the proceedings under KOMA.
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# KOMA

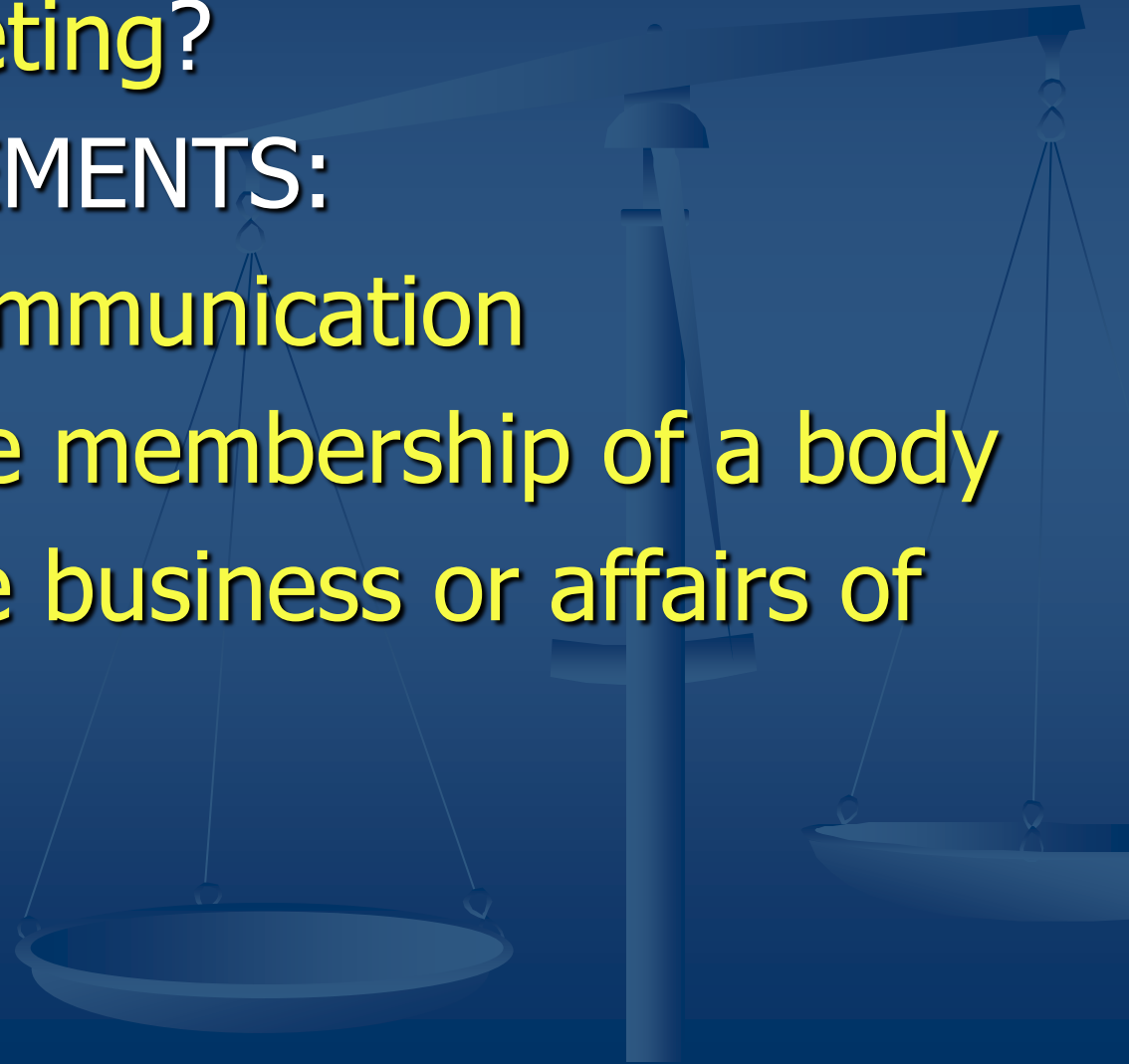
- No binding action by **secret ballot**; public entitled to know how each representative voted
- Cameras and other recording devices must be allowed
  - Subject to reasonable rules to insure orderly proceedings

# KOMA

- What is a Meeting?

## THREE KEY ELEMENTS:

- Interactive communication
- Majority of the membership of a body
- Discussing the business or affairs of the body



# KOMA

## ■ Interactive Communications

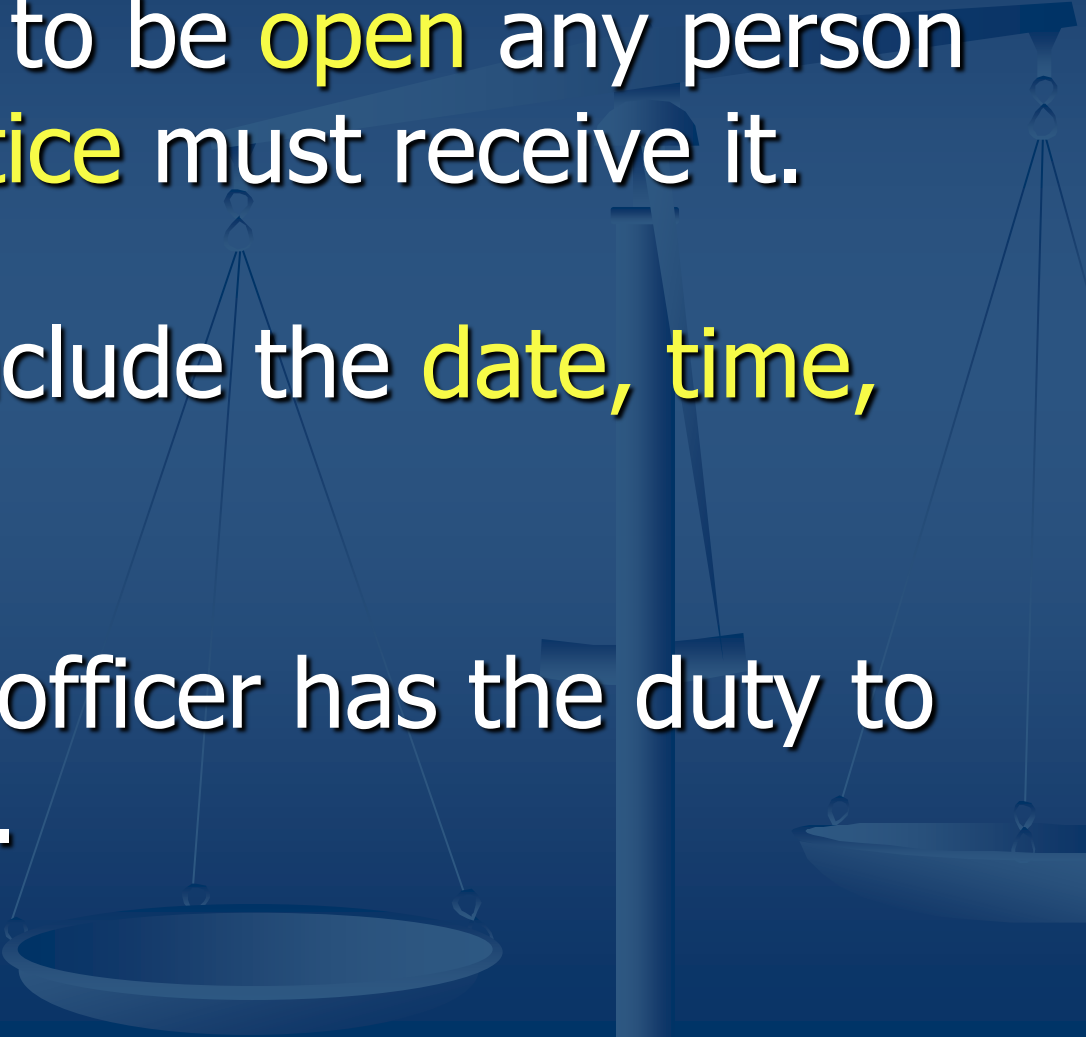
- In-person gatherings, telephone calls, emails, text messages, other methods of communication
- Polling of members by third parties
- No prearrangement requirement

# KOMA

- Serial interactive communications are OPEN if they collectively:
  - Involve a **majority of the membership**
  - Share a **common topic** concerning the business or affairs of the body, and
  - Intended by any or all participants to **reach agreement** on a matter that requires **binding action**

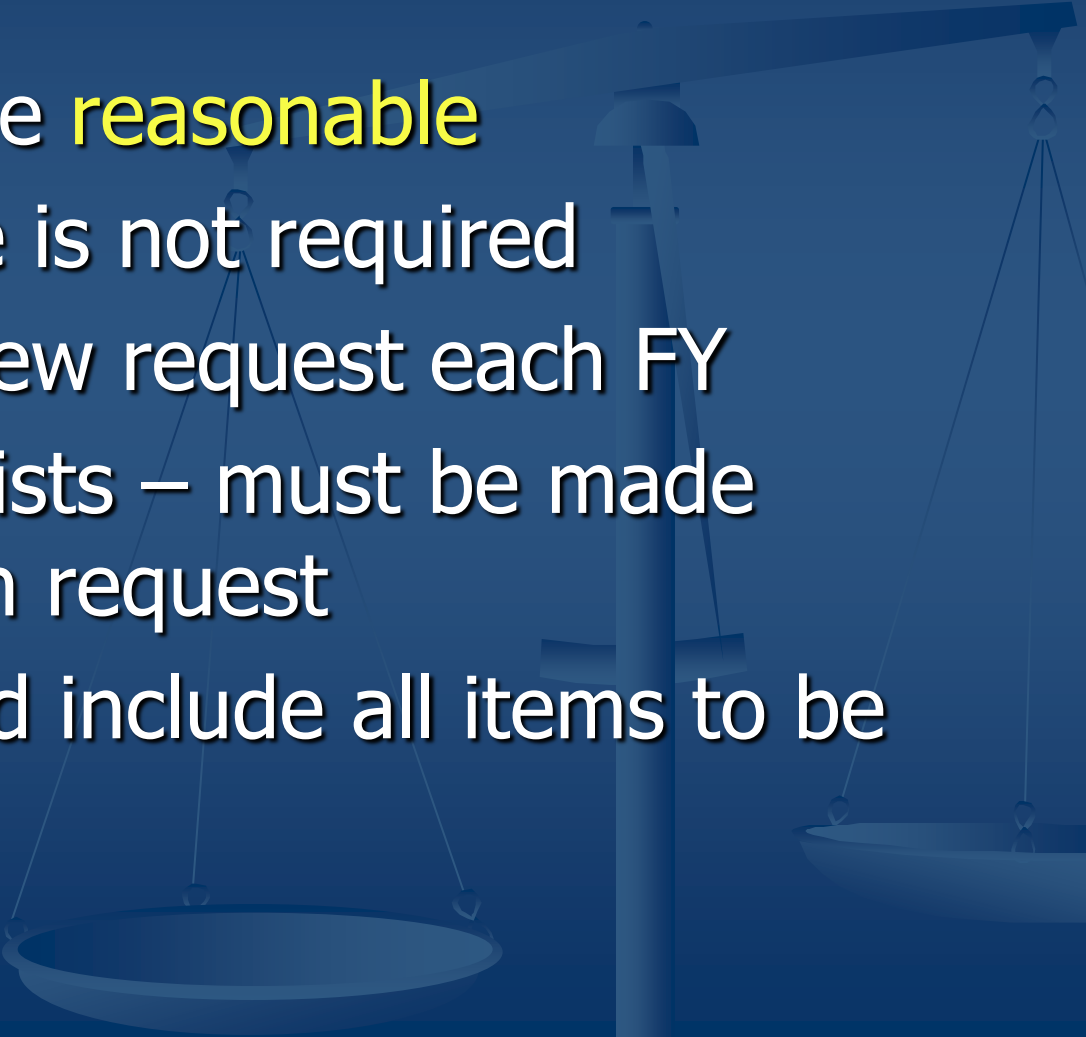


# KOMA

- For a meeting to be **open** any person requesting **notice** must receive it.
  - Notice must include the **date, time, and place.**
  - The presiding officer has the duty to provide notice.
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- A faint, stylized illustration of a balance scale is visible in the background, centered behind the text. The scale has two pans hanging from a central beam, and its base is a thick vertical column. The image is rendered in a light blue color that blends with the dark blue background.

# KOMA

## ■ NOTICE

- Notice must be **reasonable**
  - Written notice is not required
  - Can require new request each FY
  - **IF** Agenda exists – must be made available upon request
  - Agenda should include all items to be discussed
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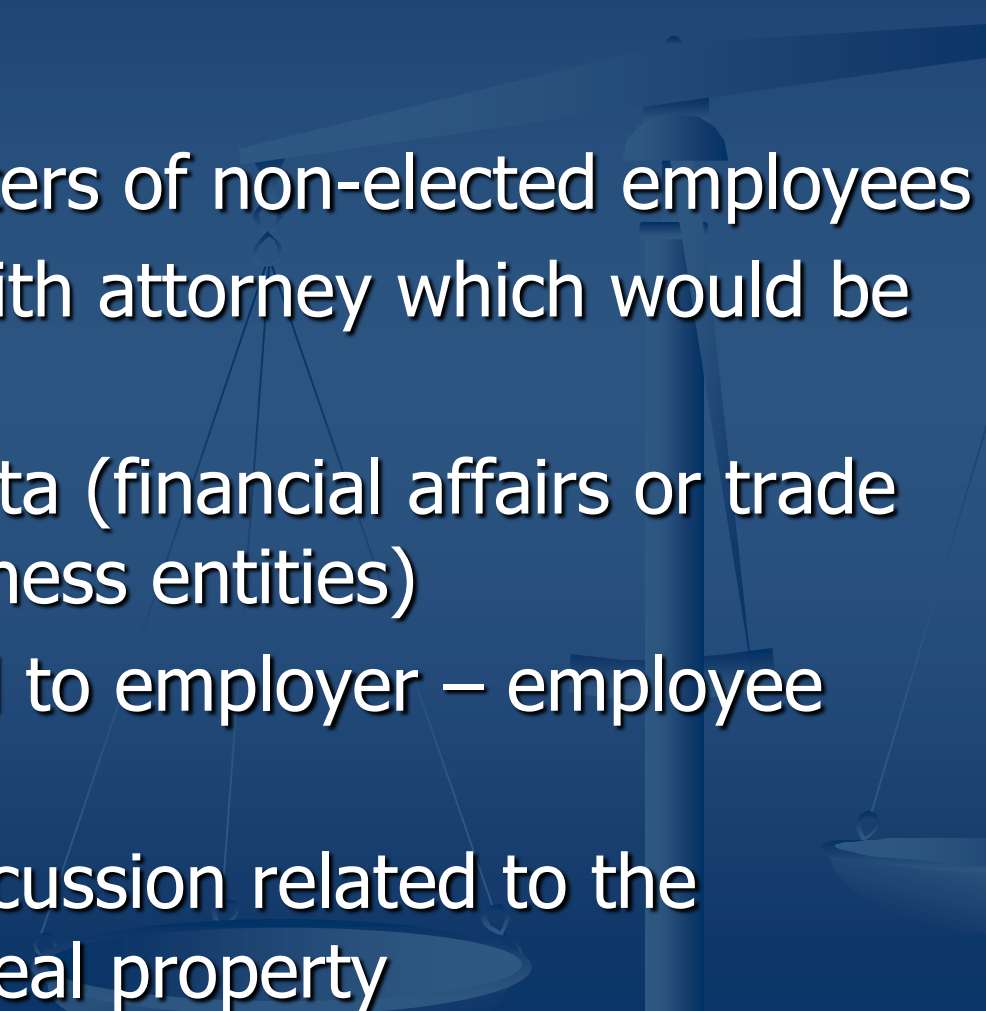
# KOMA

- EXECUTIVE (CLOSED) SESSIONS
  - Convene open meeting
  - Formal motion, second, and affirmative vote required to recess
  - Return to open meeting to continue business or to adjourn

# KOMA

- Formal motion MUST include:
  - Justification for closure
    - Explanation of need
  - Subjects for discussion
    - Statutory exceptions
  - Time and place meeting will resume

# KOMA

- Limited subject matter
  - Examples:
    - Personnel matters of non-elected employees
    - Consultation with attorney which would be privileged
    - Confidential data (financial affairs or trade secrets of business entities)
    - Matters related to employer – employee negotiations
    - Preliminary discussion related to the acquisition of real property
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# KOMA

- Example of motion:
  - “I move to recess into executive session to discuss confidential data relating to the financial affairs of WWW Corp. in order to protect the privacy rights of that entity; and that we reconvene the meeting at 8:00p.m. in the Council Chamber.”
- No other matters may be discussed other than those stated in the motion.

# KOMA

- Closed session limitations:
  - No binding action can be taken
    - BUT: Consensus can be achieved
  - No outsiders unless invited to assist members
  - Burden of proof is on the body to show substantial compliance

# KOMA

## ■ Enforcement:

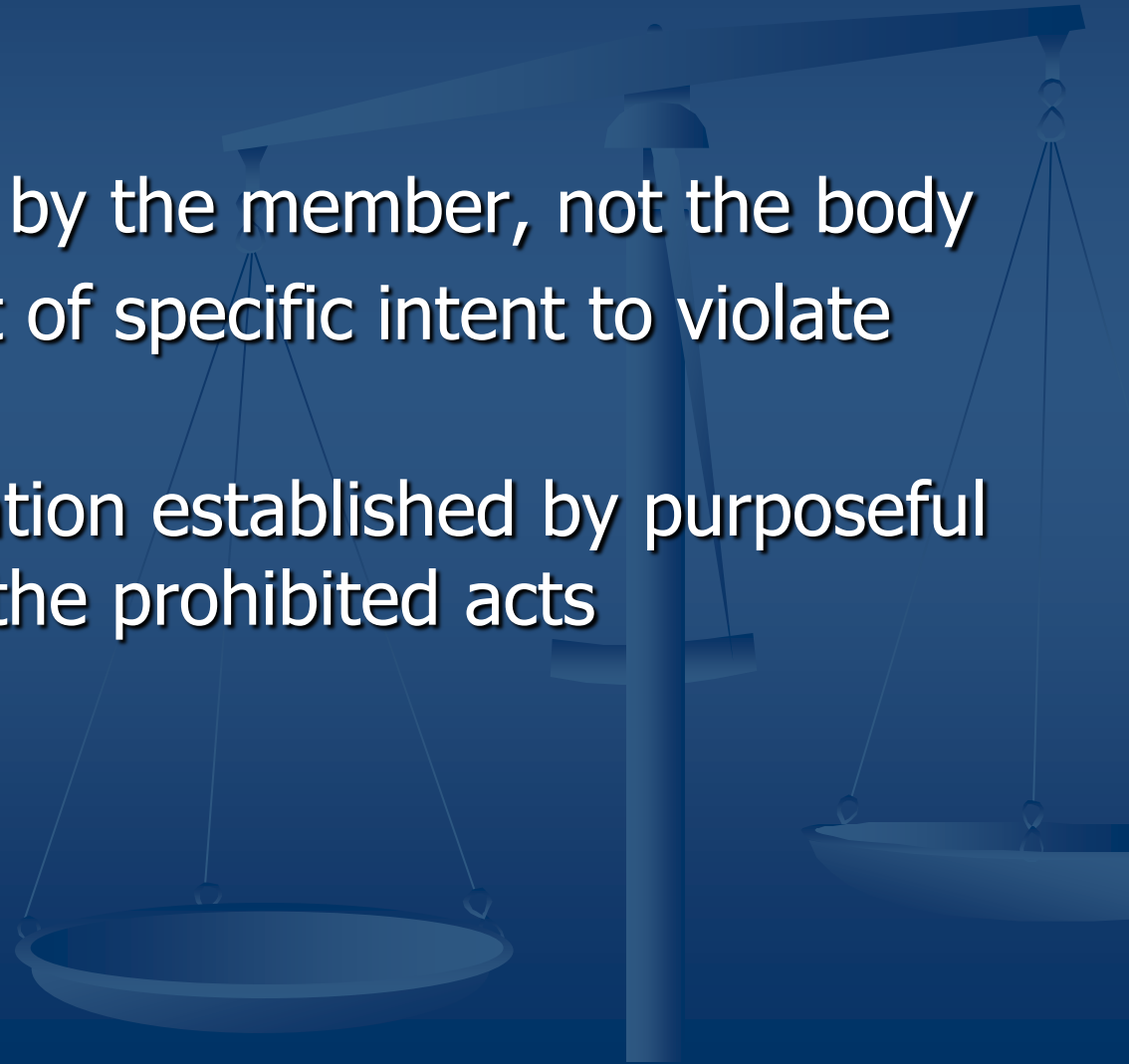
- By Attorney General, County or District Attorney, or by any person
- Binding actions at meetings not in “substantial compliance” voidable by AG/DA in suit filed within 21 days of action
- Suits may seek injunction, mandamus or other appropriate order



# KOMA

## ■ Enforcement:

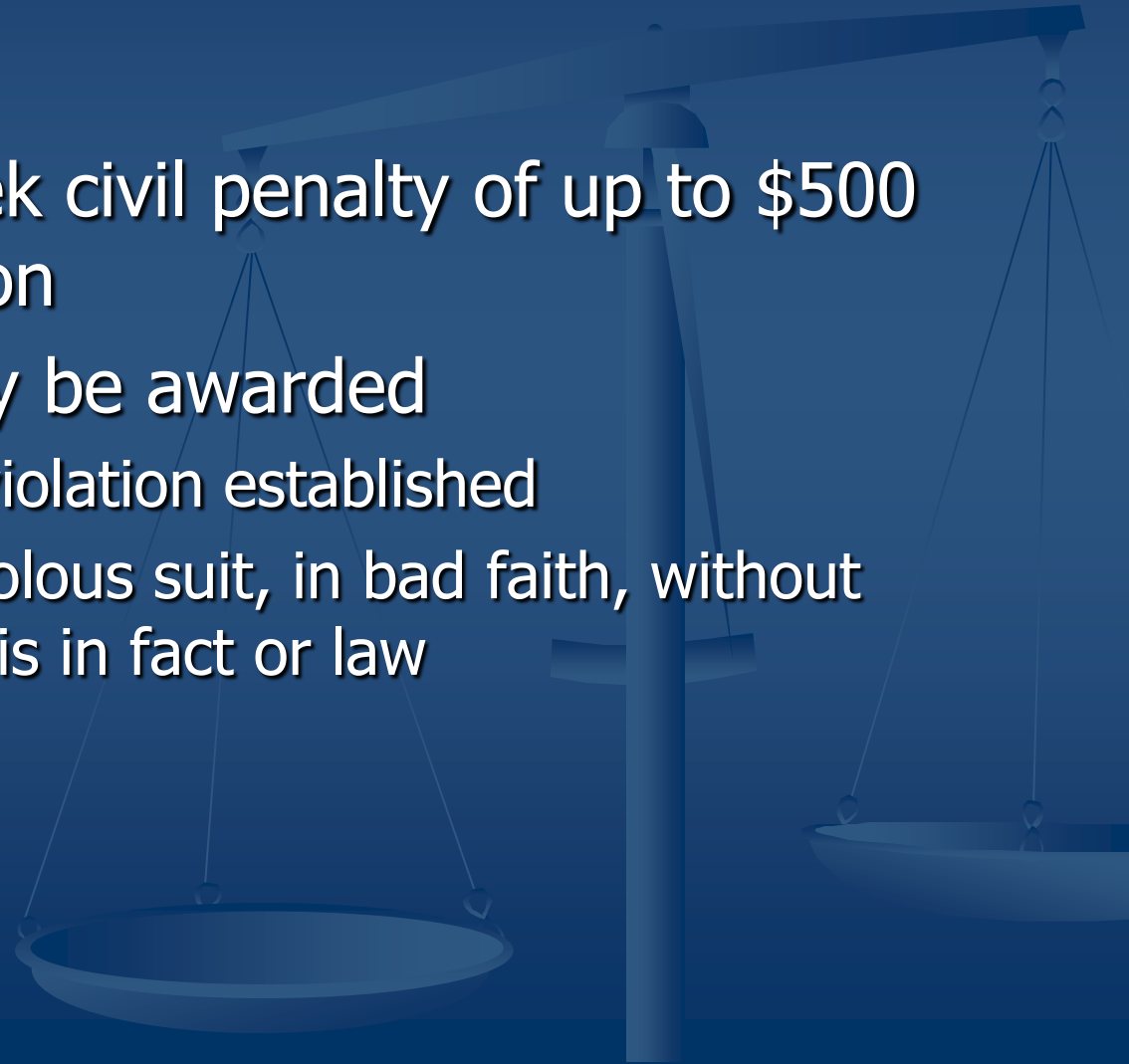
- The violation is by the member, not the body
- No requirement of specific intent to violate the law
- “Knowing” violation established by purposeful commission of the prohibited acts



# KOMA

## ■ Penalties:

- AG/DA may seek civil penalty of up to \$500 for each violation
- Court costs may be awarded
  - To plaintiff, if violation established
  - To body, if frivolous suit, in bad faith, without reasonable basis in fact or law



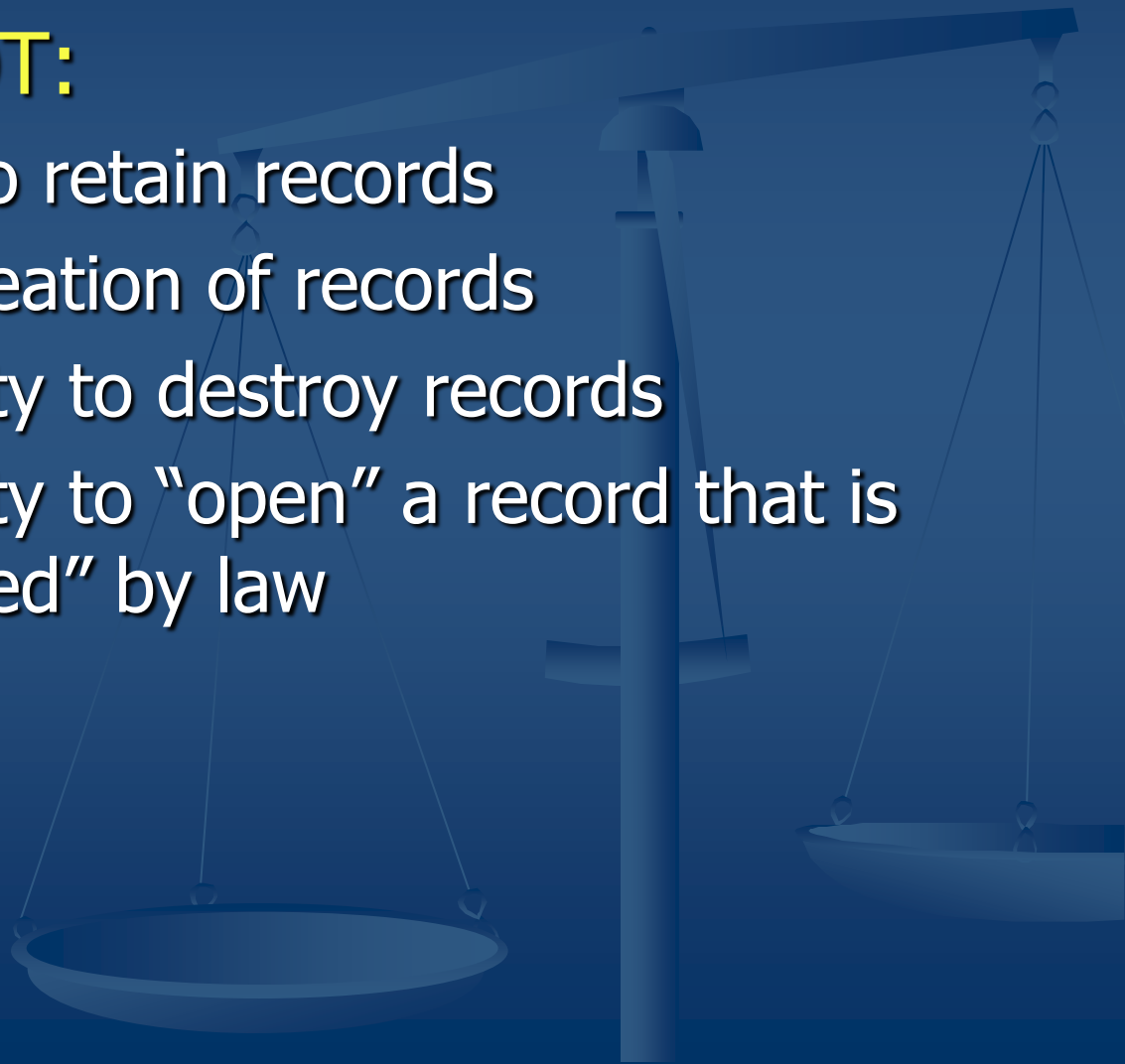
# KANSAS OPEN RECORDS ACT (KORA)

- The public's statutory right to:
  - Inspect records of a public agency
  - Copy records of a public agency
- Applies to the state or any political or taxing subdivision, or their officers and agencies much like KOMA
- "It is declared to be the public policy of this state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be **liberally construed and applied** to promote such policy."

# KORA

## ■ KORA DOES NOT:

- Create a duty to retain records
- Mandate the creation of records
- Provide authority to destroy records
- Provide authority to “open” a record that is otherwise “closed” by law



# KORA

- **Public Records**
- Recorded information regardless of form
  - Made, maintained or kept by a public agency
  - DOES NOT INCLUDE:
    - Records owned by private person/entity and not related to publicly funded operations
    - Records made, maintained or kept by legislators or members of governing bodies of political or taxing subdivisions

# KORA

- Exempt Records
- Public access is not mandatory for certain exempt records (currently, 54 exemptions)
- Examples:
  - Personnel records
  - Criminal Investigative records
  - Medical treatment records

# KORA

- Examples:
  - Records privileged under the rules of evidence
  - Attorney work product
  - Records containing personal information where disclosure would constitute a “clearly unwarranted invasion of personal privacy”
  - Engineering and architectural estimates relative to public improvements
  - Sealed bids until a bid accepted or all rejected

# KORA

## ■ Specific Requirements

- Adopt procedures for public inspection and copying as required by KORA
- Provide suitable facilities for the public to use for inspection
- Appoint a records custodian
- Make available a brochure detailing the rights of the public and responsibilities of the agency re KORA



# KORA

## ■ Specific Requirements

- Requests are to be handled as soon as possible (Within 3 business days)
- Permit some copying of public records (limited exceptions)
- Prohibit use of public records of lists of names for commercial purposes
- Designate a local freedom of information officer

# KORA

## ■ Public Right of Access

- Access during regular office hours
- Agency may require written requests to establish specific records desired and the requester's name, address
- If access is statutorily limited, may require written certification that information obtained will not be used to sell property or services

# KORA

## ■ Public Right of Access

- Agency may require
  - Proof of identity
  - Payment of reasonable costs of copying before fulfilling request
- Agency may NOT
  - Require a specific form to request records
  - Be required to provide copies of audio or visual recordings unless played in a public meeting of the governing body (if played, need not copy if privately copyrighted)

# KORA

- Record's Custodian has 3 Options
  - Grant access within 3 business days
  - Inform requester that access or a decision on access will be delayed
  - Deny the request

# KORA

## ■ Delayed Access

- Custodian must provide written statement explaining the delay & date of earliest access or decision on access

## ■ Denial of Access

- Custodian must provide written statement explaining grounds & legal authority for denial within three days

# KORA

- Denial for “Unreasonable Burden”
- Custodian could deny request if it places an **unreasonable burden** on agency to produce or if repeated requests are made for the **purpose of disrupting agency**

# KORA

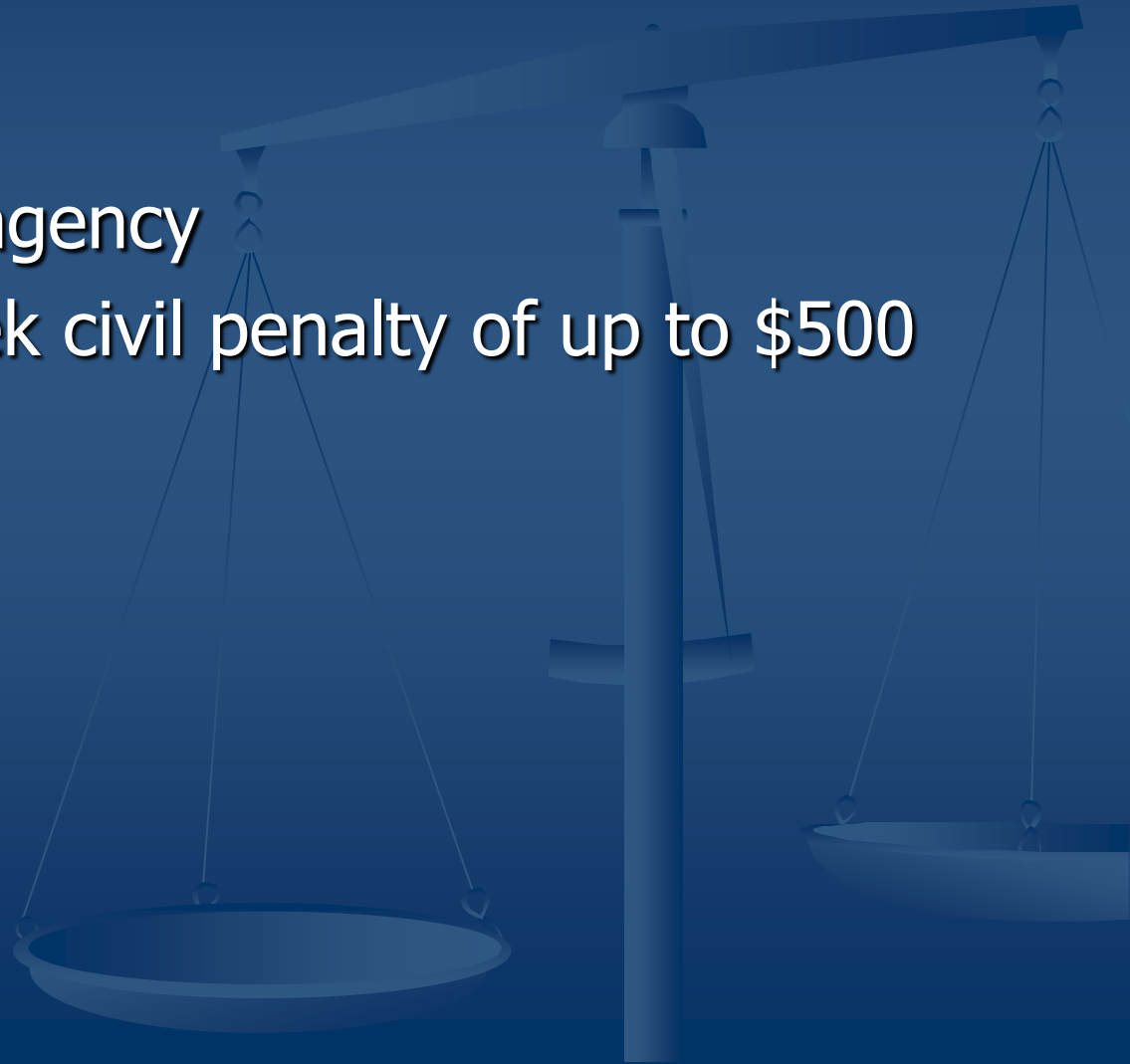
## ■ Enforcement

- May be enforced by, Attorney General, County or District Attorney, or any person
- Relief through injunction, mandamus or other appropriate order
- Costs and attorneys fees can be awarded against agency if denial in **bad faith and without reasonable basis in fact or law**; reverse is also true, i.e. suit brought in bad faith without reasonable basis

# KORA

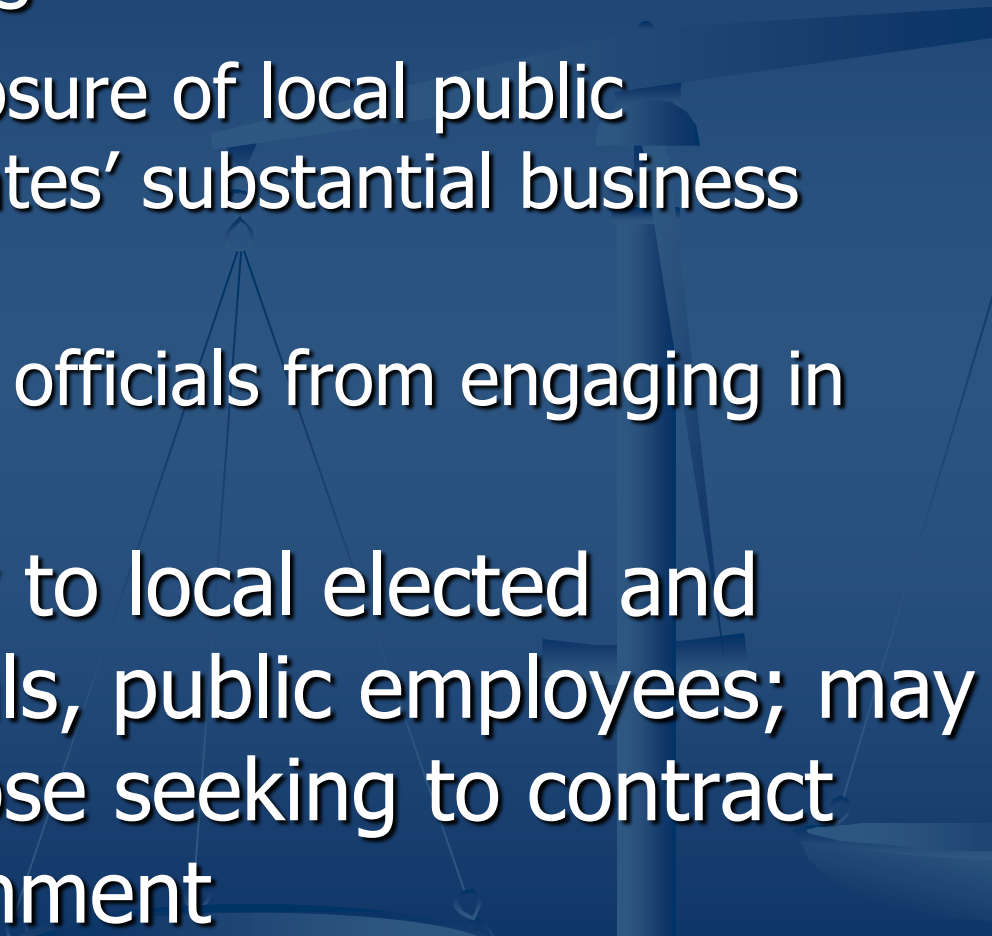
## ■ Penalties

- Violation is by agency
- AG/DA may seek civil penalty of up to \$500

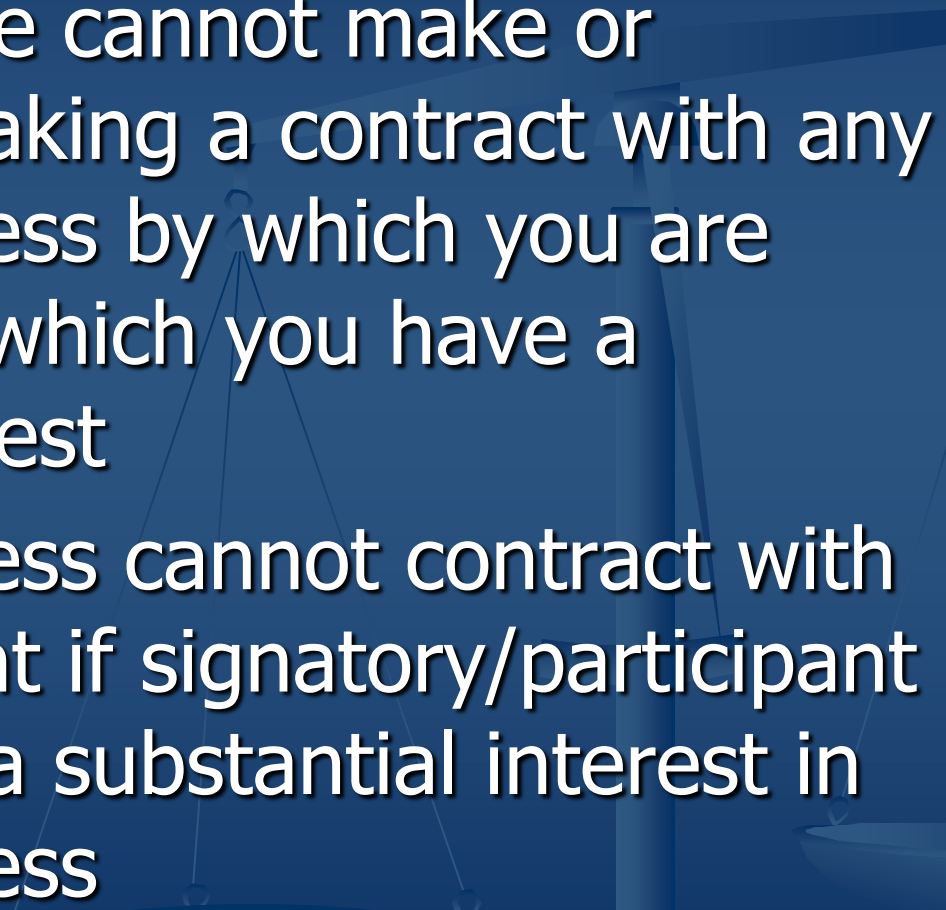




# Kansas Governmental Ethics Act

- Primary Purposes
    - To require disclosure of local public officials'/candidates' substantial business interests
    - To prohibit local officials from engaging in self-dealing
  - Applies primarily to local elected and appointed officials, public employees; may also apply to those seeking to contract with local government
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# Prohibitions

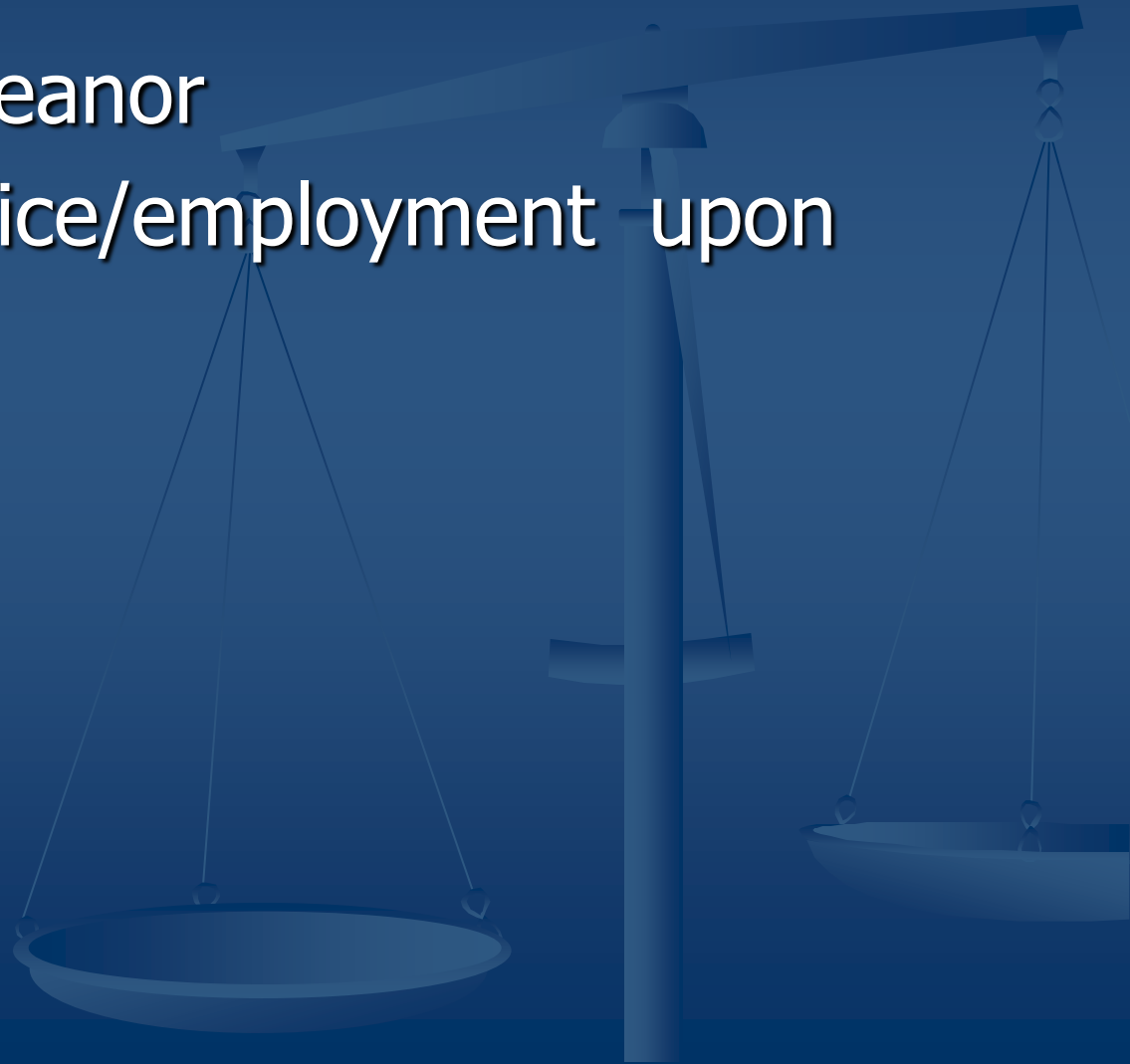
- Officer/employee cannot make or participate in making a contract with any person or business by which you are employed or in which you have a substantial interest
  - Person or business cannot contract with local government if signatory/participant to contract has a substantial interest in person or business
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# Prohibitions Do Not Apply

- To contracts let after competitive bidding has been advertised by published notice
- To contracts for property or services for which the price or rate is fixed by law
- Abstaining from *any action* regarding the contract protects officer/employee from liability

# Penalties for Violations

- Class B misdemeanor
- Forfeiture of office/employment upon conviction



# Non-elected/appointed Officers and Employees

- Before acting on any matter in which he has a substantial interest in, an officer/employee must file a written report of the nature of the interest with the county election officer
- Abstaining from any action regarding the matter protects officer/employee from liability
- Violation is a Class B misdemeanor

# Substantial Interests in Businesses

- By an individual or spouse, individually or collectively, within the preceding 12 months:
  - A legal or equitable ownership interest exceeding \$5,000 or 5% or a business, whichever is less
  - Receipt, from a business or combination of businesses, of:
    - Taxable income in aggregate amount of \$2,000
    - Goods or services valued at  $\geq \$500$  without reasonable & valuable compensation

# Substantial Interests in Businesses

- If individual or spouse is an officer, director, partner, associate, or proprietor of any business other than certain non-profit corporations, regardless of the amount of compensation received.



# Substantial Interest in Client or Customer (Businesses)

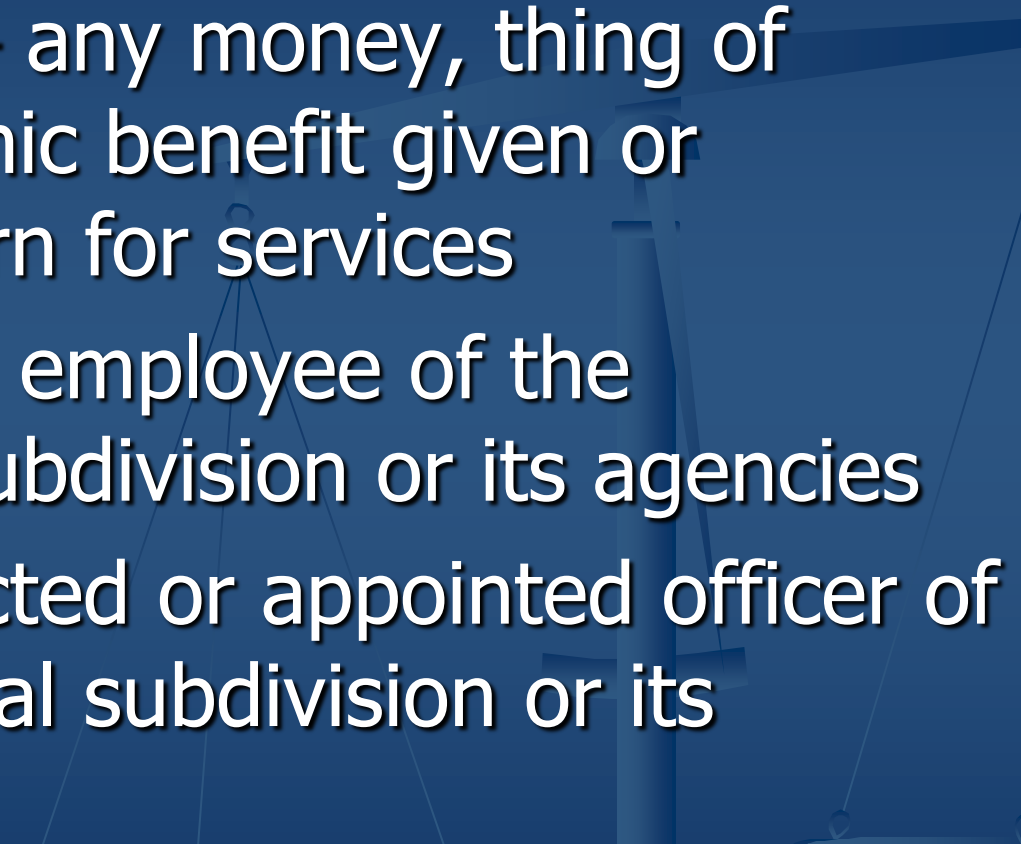
- If individual or spouse is compensated by a business or combination of businesses, by receiving a portion of each fee/commission paid by a client or customer, and the compensation was \$2,000 or more in the preceding calendar year



# Definitions

- Acts – the exercise of power or authority or performance of any duty incident to public office or employment
- Business – any corporation, partnership, association, trust...and every other business interest including ownership or use of land for income

# Definitions

- Compensation – any money, thing of value or economic benefit given or received in return for services
  - Employee – any employee of the governmental subdivision or its agencies
  - Officer – an elected or appointed officer of the governmental subdivision or its agencies
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- A faint, stylized image of a balance scale is visible in the background of the slide. The scale is positioned on the right side, with its vertical pillar and horizontal beam extending across the frame. Two pans are suspended from the beam, one on each side. The image is rendered in a light blue color that blends with the dark blue background.

# Statement of Substantial Interests

- To be filed where declaration of candidacy to be filed (City Clerk)
- Governmental Ethics Commission (GEC) prescribes form and manner for filing required disclosures
- Even though position with a non-profit is not a substantial interest, it must be disclosed in statement

# Statement of Substantial Interests

- Candidates for local office must file
  - If filing on or before filing deadline, not later than 10 days after deadline
  - If become a candidate after filing deadline, within 5 days of becoming a candidate
- If appointed to vacant, elective office
  - Before April 30, between April 15 - 30
  - After April 30, within 15 days of appointment

# Statement of Substantial Interests

- If holding office, must file any *changes in substantial interests* that occurred during the preceding calendar year, between April 15 – 30
  - For appointed officers or employees, preceding calendar year means the 12 months immediately preceding a required filing date

# Statement of Substantial Interests

- GEC form states that business ownership interests that must be disclosed include ownership of stocks, retirement accounts, mutual funds, and businesses operated out of your home
- Shares in a credit union, annuities that are not part of a retirement plan, notes and bonds do not need to be disclosed

# Questions?

